IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1457 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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AMRATLAL NATHALAL PATEL - Appellant(s)
Versus
TADVI KIRITKUMAR RAMANLAL & 2 - Defendant(s)

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Appearance :
MR KG SHETH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1, 3,
MR NAGIN N GANDHI for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI
Date : 17/07/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal (Spl.), Vadodara passed in M.A.C.P. No.409 of 1983 dated 16th December, 1983.

2.0 The brief facts of the case are that on 05.12.1982, when the opponent No.1 was standing under a tree near Bahadurpura Railway Station, he was dashed by a tractor driven by present opponent No.2 and owned by present appellant. On account of the

said accident, opponent No.1 received serious bodily injuries. Therefore, he preferred a petition claiming an amount of Rs.21,123/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Learned Advocate for the appellant has submitted that the Tribunal ought not to have exonerated opponent No.3 from the liability to satisfy the claim. He has further submitted that the Tribunal has committed an error in holding that the opponent No.2 was driving the vehicle without valid license. Hence, the impugned judgment and award deserves to be quashed and set aside.

4.0 Heard learned Advocates for the appellant and opponent No.2. Though, served none appears on behalf of the opponent Nos. 1 and 3. By passing the impugned judgment and award, the Tribunal awarded an

amount of Rs.17,800/- with interest at the rate of six per cent and with proportionate costs. However, the Tribunal discharged the claim in respect of opponent No.3-Insurance Company.

4.1 It is not in dispute, that the opponent No.1 sustained injuries on account of the accident in question. Here, it would be relevant to refer to a judgment of this Court passed in the case of ***"Amul Ramachandra Gandhi Vs. Abbasbhai Kasambhai Diwan and Ors."*** reported in 1979 A.C.J. 460, wherein it was held that since the children are normally forgetful of the perils of crossing and walking on the road, therefore, there would not be any contributory negligence on the shoulder of the children.

4.2 In the instant case also, the opponent No.1 was a student aged about 8 years at the time of the accident in question, and hence, it was incumbent on the driver of the offending vehicle to see that he drives bus in such a way so as not to cause any accident. Therefore, in view of the above settled

legal position it can reasonably be said that the accident in question did not took place on account of the negligence on the part of the opponent No.1.

4.3 On perusal of the evidence of one Shri. Prabhatsinh Himatsinh-police constable which is produced at Exh.38, it clearly transpires that at the time of accident in question, opponent No.2 was driving the offending vehicle. He has further stated that while the 'Panchnama' of the scene of offence was being prepared, opponent No.2 was present and before the 'Panchas' he conceded that he was working as conductor on the said vehicle and that he was not having any valid driving license.

4.4 In the policy of the vehicle involved in the alleged accident-Exh.42, it has been clearly stated that the driver must hold a valid driving licence at the time of accident and if such driver is not holding valid licence, then the insurance company shall not be bound to indemnify the insured.

4.5 Hence, from the above it clearly transpires that since opponent No.1 was not having valid driving license at the relevant time, he can, solely, be held responsible for the accident in question, and therefore, opponent No.3-Insurance Company cannot be said to be liable to indemnify the appellant. Hence, the present appeal deserves to be dismissed.

5.0 In the result, the appeal stands dismissed. No order as to costs.

(K.S. Jhaveri,J.)

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